

Tip Sheet for States and Territories: Using CCDF Amendments and Waiver Flexibilities to Meet the Child Care Needs as a Result of COVID-19

Lead Agencies have broad flexibility to operate the Child Care and Development Fund (CCDF) program and have a number of flexibilities within federal statute and regulation to adapt policies in order to maintain continuity of services for families affected by this Coronavirus Disease 2019 (COVID-19) pandemic. Lead Agencies also have emergency preparedness plans as required by CCDF regulations that contain guidelines for the continuation of child care subsidies and child care services in disasters and emergencies. Finally, the Coronavirus Aid, Relief, and Economic Security Act or the "CARES Act" passed into law on March 27, 2020 provides additional flexibility.

This tip sheet is intended to assist Lead Agencies in understanding what flexibility is available to them, and how to use it to continue child care services. It contains the following sections:

- Section 1 Questions to consider when determining where flexibility is needed,
- <u>Section 2</u> Examples of Types of CCDF Policy Changes and Use of Amendments Only or Waivers with Amendments, and
- <u>Section 3</u> Tips and Examples for Requesting Temporary Waivers.

Section 1: Questions to Consider when Determining Where Flexibility is Needed When seeking flexibility, the following four questions are important to consider.

1) What are the needs within the state or territory?

Lead Agencies can first begin by asking, what are the most important issues facing their communities?

- Do our communities have essential personnel like health care workers, grocery store staff, and emergency workers who need child care to continue to work?
- Do our communities have families losing their jobs?
- Do our communities have families that can no longer afford their co-payments?
- Are we trying to address the shrinking number of providers?
- Are we concerned that providers, when ordered to close their programs, will leave the field and not return or lose staff resulting in increased training needs when reopening?
- Are we trying to increase capacity within child care centers?
- Are we facing shortages in child care staff or providers due to program closures?
- In practicing social distancing, do parents prefer their children be served in smaller groups in home-based settings or reduced class sizes in child care centers?

- Are we considering where closures are occurring to better address needs and target resources appropriately rather than simply looking at statewide numbers?
- How do we create temporary or emergency centers?
- How will we "stand down" emergency centers and staff when the crisis ends?
- In the case of a pandemic, do child care staff have the resources they need to care for children, such as thermometers and disposable thermometer covers, gloves for diapering, cleaning supplies, etc.
- What avenues do we have for distributing funds quickly to impacted areas or providers? Can our procurement process be streamlined?
- Do we have systems in place to continue to prevent fraud when policies are changed during a crisis?

2) What types of flexibilities do Lead Agencies have without requesting an amendment or a waiver?

- Lead Agencies can expand their partnerships, or the focus of their existing partnerships, to meet the identified needs for child care.
- Lead Agencies can expand the information provided on the consumer education websites.
- Lead Agencies can choose to enhance the referral services they are providing to families, especially to the families of essential workers who are looking for available child care.
- Lead Agencies can develop emergency, temporary, or simplified licensing processes.
- Lead Agencies can promote license-exempt care in a child's home or a provider's home.
- Lead Agencies can expand funding to move part-day school-age programs to full-day schoolage programs.
- Lead Agencies can streamline procedures to determine eligibility.

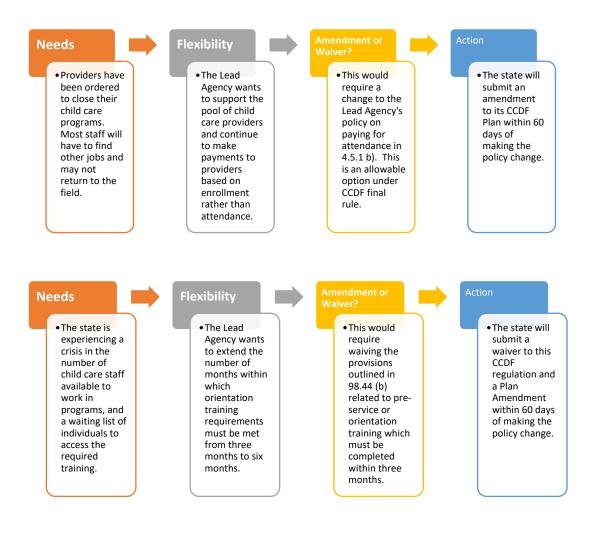
3) What flexibility in CCDF state or federal policy would help to address the needs identified?

- Does our Lead Agency want to waive co-payments for some or all families?
- Does our Lead Agency want to use CCDF quality dollars to support impacted families or providers?
- Does our Lead Agency want to change payment practices for providers?
- Does our Lead Agency want to continue paying providers who are closed?
- Does our Lead Agency want to limit child care services to serving essential workers?
- Can our eligibility and payment practices be improved to streamline access to care, payment to providers, and reductions in provider paperwork?
- Does our Lead Agency want to waive certain health and safety practices?
- Does our Lead Agency want to serve families making above 85 percent State Median Income (SMI)?
- Can our Lead Agency conduct monitoring virtually?

4) Does the Lead Agency only need an amendment, or does it need to request a waiver to implement the policy change(s)? What is the difference?

- Is the policy change already possible under CCDF? CCDF provides existing flexibility to make policy and program changes through a Plan Amendment only, as long as the change falls within current CCDF requirements.
- Is the policy change something that would not meet the current CCDF requirements? In situations where the proposed change would not meet CCDF requirements, Lead Agencies can request a temporary waiver of the CCDF requirement when there are extraordinary circumstances, like the COVID-19 virus. In most cases, an approved waiver request will also require a Plan Amendment, which can be submitted up to 60 days following approval of the policy change.¹

Below are two examples of how Lead Agencies might think through this process:



¹ Examples of waivers that would not need a corresponding Plan Amendment would be Lead Agency funding requirements, or Lead Agency reporting requirements in Subpart G and H of the CCDF final rule.

Section 2: Examples of Types of CCDF Policy Changes and Use of Amendments Only or Waivers with Amendments

The following table shows examples of policy changes that can be made with a <u>CCDF Plan Amendment</u> and do not need a waiver request. These examples include those changes as covered by the Coronavirus Aid, Relief, and Economic Security Act or the "CARES Act" passed into law on March 27, 2020.

Provision	Reason for Action	Element of State or Territory CCDF Plan Section to Amend
Statewide Disaster Plan		
Modify the Statewide Disaster Plan	Lead Agencies have the flexibility to modify its Statewide Disaster Plan to cover activities for continuation of emergency and temporary services during and after a disaster.	1.8.2 1.8.3
	Note – These changes apply to changes to the actual Statewide Disaster Plan itself. Changes to CCDF policies, such as eligibility, provider requirements, etc., should be amended in the corresponding CCDF Plan section as included in this table.	
Change CCDF eligibility crit	teria or priority rules for children and families	
Broaden the definition of working	Lead Agencies have flexibility to define "working" to include families seeking employment, participating in community service, or a similar activity.	3.1.2 a)
Waive the income limit for children in protective services on a case-by-case basis.	Lead Agencies have the option to waive the income eligibility requirements for children who receive or need to receive protective services, if determined to be necessary, on a case-by-case basis.	3.1.2 d)
Broaden the definition of protective services	In emergency situations, Lead Agencies have the option of deeming children affected by a federal or state declared emergency (such as children of health care, essential, and emergency workers) to be in need of protective services and therefore, the eligibility requirements (such as income threshold, work or training requirement) could be waived on a case-by-case basis.	3.1.2 d)
	CARES Act funds can be used to provide child care assistance to health care sector employees, emergency responders, sanitation workers, and other workers deemed essential during the response to the coronavirus, without regard to the income eligibility requirements.	

Provision	Reason for Action	Element of State or Territory CCDF Plan Section to Amend	
Raise the income eligibility limits or redefine what the Lead Agency counts as income	Lead Agencies have the flexibility to define income and to set the income limit or purposes of CCDF eligibility. Lead Agencies could raise the income eligibility limits and/or change what counts as income. For example, the Lead Agency could exclude disaster relief or other forms of temporary assistance from counting as income. CARES Act funds can be used for subsidies for health care, emergency, or other essential workers without regard to income attails.	3.1.3 a) and b)	
Add additional priority rules	income eligibility requirements. As long as income is below 85 percent of SMI, a parent is engaged in an eligible activity as defined by the Lead Agency, and the child is under age 13, Lead Agencies can add additional eligibility conditions or develop priority rules. (For example, prioritizing the children of health care sector employees, emergency responders, sanitation workers, and other essential workers.) CARES Act funding can be used for subsidies for health care, emergency, or other essential workers without regard to	3.1.5 3.2.3 3.2.4	
Allow for different eligibility conditions in different parts of the jurisdiction	income eligibility requirements. There is no "statewide" requirement for eligibility or priority criteria in the law. This can allow resources to be targeted to areas most affected by a federal or state declared emergency.	3.1.5 3.2.3 3.2.4	
Adjust application policies to allow for quicker approval of child care for siblings.	A Lead Agency has the flexibility to, for example, allow the addition of a school-age child under the age of 13 to a family home provider already caring for their younger siblings via a streamlined process.	3.1.5 5.2.1	
Change CCDF eligibility re-determination periods			
Lengthen eligibility determination periods	Lead Agencies may lengthen the minimum 12-month eligibility period to a longer period and Lead Agencies may also lengthen the minimum 3-month period of continued assistance (job search) to a longer period.	3.3.1 3.3.2 a)	
Waive or reduce CCDF fam	Waive or reduce CCDF family co-payments for impacted families		
Reduce co-payments.	Lead Agencies may revise their sliding fee schedule to reduce co-pays for some or all families.	3.4.1 a) 3.4.3	

Provision	Reason for Action	Element of State or Territory CCDF Plan
1 10 13 10 11	NedSoff for Action	Section to Amend
Waive co-payment requirements	As long as co-payments are not waived for all CCDF-eligible families, Lead Agencies have the option to waive family co-payment requirements for a sub-population of families that meet criteria established by the Lead Agency. This may include families directly impacted by federal or state declared emergency situations. For example, if "families affected by COVID-19" is a subset of the CCDF recipient population (e.g., essential workers only), then a waiver is NOT required. If "families affected by COVID-19" means all families in the CCDF recipient population, then a waiver would be required.	3.4.4
Establish slots funded by g	rants or contracts	
Fund slots through grants and contracts.	To build the supply of child care providers, Lead Agencies may consider funding subsidy slots through grants or contracts rather than certificates or vouchers. For example, Lead Agencies may establish contracts with providers to care for children of health care, emergency, or other essential workers or Lead Agencies may establish contracts with hospitals to provide on-site child care for staff.	4.1.3 b)
Change child care subsidy		4541)
Pay based on enrollment rather than attendance, increase the number of absence days allowed, and paying two providers with CARES Act funds.	Lead Agencies may support providers by paying based on enrollment rather than attendance, or they may amend their absence day policies to be more generous. CARES Act funds can be used for continued payments and assistance to child care providers in the case of decreased enrollment or closures, which may include paying for two providers. States, Territories, and Tribes are encouraged to place conditions on payments to child care providers that ensure that child care providers use a portion of funds received to continue to pay the salaries and wages of staff. Note – If Lead Agencies plan to pay for two providers using regular CCDF funds, a waiver would be required as CCDF does not allow two providers to receive two payments for the same child care for the same services/time period.	4.5.1 b)
Adjust health and safety re		
Adjust adult to child ratios or group size	A Lead Agency might decrease adult to child ratios or group size to encourage smaller groups in a child care setting.	5.2.1
	A Lead Agency has the flexibility to, for example, allow the addition of a school-age child to a family home provider already caring for younger siblings.	

Provision	Reason for Action	Element of State or Territory CCDF Plan Section to Amend
Shift health and safety training requirements from required prior to employment (preservice) to be required within three months (orientation)	CCDF requires initial training requirements to be met either pre-service (prior to employment) or within three months of employment (orientation). Therefore, as long as the Lead Agency shifted training requirements from pre-service (prior to employment) to a period within three months of employment (orientation), a waiver would not be needed.	5.2.3
Adjust annual inspections schedule	OCC recognizes that states may not have the capacity to conduct all scheduled annual inspections for existing facilities.	5.3.2 a) 2 5.3.2 b) 2 5.3.2 c) 2
	Lead Agencies have the option to alter or postpone their annual inspection schedule for a temporary period for existing facilities during the state-declared emergency period without a waiver. While the requirements for child care programs must receive an annual inspection, this does not necessarily mean that inspections must occur at exact 12-month intervals. The Lead Agency has the flexibility to schedule the inspections within the calendar year. Lead Agencies should be mindful in considering schedule adjustments, however, not to space inspections so far apart or that creates a backlog that it undermines the intent of the annual requirement (e.g., scheduling or delaying inspections for 23 months). In cases where the Lead Agency cannot ensure that child care programs will receive their annual inspection under the adjusted or delayed schedule, then a waiver will be needed.	5.3.3
Provider/Staff employment eligibility decisions without all background check components completed	A Lead Agency has the flexibility to make employment eligibility decisions in the event that not all background check components are completed within 45 days.	5.4.9

Provision	Reason for Action	Element of State or Territory CCDF Plan Section to Amend
Use CCDF quality dollars to	improve and maintain quality and supply	
Use quality dollars to support impacted providers	Lead Agencies may use existing quality improvement dollars to provide retention or supply-building grants or contracts to providers for equipment, supplies (including cleaning supplies or deep cleaning services), establishing virtual professional development opportunities and staffing, or other costs. Lead Agencies may use this flexibility to target support to providers that experience a disruption in subsidy receipt due to an emergency. Providers are eligible for support, even if the families served do not receive CCDF subsidies.	7.2.1 7.11.2
	"CARES Act" funds shall be available to eligible child care providers for the purposes of cleaning and sanitation, and other activities necessary to maintain or resume the operation of programs through and after the coronavirus emergency, even if such providers were not receiving CCDF assistance prior to the public health emergency. The quality spending requirements, as well as requirements to spend a substantial portion on direct services, do not apply to the supplemental appropriation provided by the Coronavirus Aid, Relief, and Economic Security Act or the "CARES Act."	

Source: Office of Child Care, Administration for Children and Families, U.S. Department of Health and Human Services. (n.d.). Child care and development fund (CCDF) plan FFY 2019-2021. Retrieved from https://www.acf.hhs.gov/sites/default/files/occ/fy 2019 2021ccdf plan preprint 11 30 17.pdf

The following table shows examples of policy changes that would need a waiver request and subsequent Plan Amendment.

Provision	Reason for Action	Waive what Section of Rule or Law?	Corresponding Plan Amendment
Provide CCDF	A Lead Agency may request a waiver to limit	658E(c)(2)(N)(i)	3.3.1
assistance for less	families' eligibility period to less than 12	98.16 (h)(1)	3.3.2
than 12 months for	months.		
affected families			
Waive all health and	OCC may approve waivers for all health and	658E(c)(2)(H) –	Section 5
safety requirements,	safety requirements as long as a justification or	(J)	
including ratio/group	proposed alternative in the waiver request	98.41-2 and	
size, staff training, and	describes how the Lead Agency will ensure the	98.45 (b)	
inspections	health and safety of children in child care.		

Provision	Reason for Action	Waive what Section of Rule or Law?	Corresponding Plan Amendment
Eliminate certain required health and safety training requirements	A Lead Agency may request a waiver to eliminate certain required health and safety training requirements, to increase the pool of child care providers more quickly. A waiver would also be required if the Lead Agency delays the required completion of preservice orientation training beyond the first three months of employment.	658E(c)(2)(I)(i)(XI) 98.44(b)	5.2.3, 5.2.4
Suspend annual inspections or monitoring for providers	A Lead Agency may request a waiver to the annual inspection requirements because of the need for social distancing or because of a reduction in licensing or inspection staff. States will need to submit a waiver request if onsite inspections will not be conducted within the annual timeframe (including if using virtual inspections only).	658E(c)(2)(K)(i)(II) and (IV) 98.42(b)(2)	5.3.2 5.3.3
Eliminate pre- licensure inspections or waive inspection requirements for emergency/temporary facilities	For new emergency/temporary facilities that were not otherwise subject to state child care inspections, OCC recommends that the Lead Agency follow its statewide guidance on these temporary facilities. OCC will not approve waivers that do not provide some assurance for operating during the emergency to support the health and safety of children.	658E(c)(2)(K)(i)(II) and (IV) 98.42(b)(2)	5.3.2 5.3.3
Broaden the definition of "relative"	In order to expand the pool of providers, a Lead Agency may request a waiver to change the definition of relative. CCDF defines eligible relative providers (who do not have to meet any health and safety requirements) as grandparents, great grandparents, siblings residing in a separate residence, aunts, and uncles. OCC may approve waivers for other extended family members (such as cousins, great-grandparents, etc.) as long as the waiver indicates the relative is providing child care for essential workers for the emergency period only. Note: CCDF defines relative providers as individuals 18 or older. OCC will not approve a waiver that would allow providers under age 18 to care for children receiving CCDF subsidies.	658P(6)(B) 98.2	5.2.2 5.2.3 5.3.3

		Waive what	Corresponding
Provision	Reason for Action	Section of Rule or	Plan
Provision	Reason for Action		
NA		Law?	Amendment
Waive background check requirements	A Lead Agency may request a waiver to some of the background check requirements, within certain parameters, so that the number of child care providers who can work under direct supervision is increased while also remaining vigilant about ensuring child safety. This can include requesting a waiver for: • One or more of the 8 components of the CCDBG Comprehensive Background Checks at 45 C.F.R. 98.43. • Provisional Employment Requirement (45C.F.R.98.43(d)(4)): child care staff may begin working unsupervised without awaiting the results of the FBI fingerprint check/state fingerprint check. • 180 day requirement (45 C.F.R. 98.43(d)(3)): child care providers may need to quickly hire a staff member that was separated from employment from a child care provider for more than 180	658H(b) 98.43	5.4
	days, but less than 5 years. While fingerprinting services may be unavailable at this time, OCC still expects states to make every effort to conduct any available namebased checks for prospective employees (including the name based NCIC NSOR check, the SOR check, and the CAN checks). States are also strongly encouraged to use the National Sex Offender Public Website at nsopw.gov at this time. OCC will not approve waivers that do not include some attempt to determine a prospective child care staff member's history of convictions. States will be required to list the specific checks that will be conducted for new/emergency/temporary staff. Note: Lead Agencies do not need to apply for extraordinary circumstance waivers for CCDBG background check components that were already waived.		

Sources: Child Care and Development Fund, 45 C.F.R. § 98.1 (2016) and Child Care and Development Block Grant Act of 2014, Pub.L. No. 113-186, §658. Retrieved from https://www.congress.gov/113/plaws/publ186/PLAW-113pub186.pdf.

Section 3: Tips and Examples for Requesting Temporary Waivers

Section 98.19(b)(2) allows Lead Agencies to apply for temporary waivers from specific requirements in the Child Care and Development Block Grant (CCDBG) Act of 2014 and the CCDF final rule. These waivers can be approved for no more than two years "in cases of extraordinary circumstances, which are defined as temporary circumstances or situations, such as a natural disaster or financial crisis." The approved duration of the waiver must be connected to the specific temporary sircumstances

Question	Response
How does a Lead Agency request a temporary waiver?	The Lead Agency must email an electronic written request to the <u>Office of Child Care</u> (OCC) Regional Program Manager that is addressed to the OCC Director.
. ,	Tip #1: Hard copies are not required.
	Tip #2: Waiver requests should be submitted by the Lead Agency official who has authority to act on behalf of the state, territory, or tribe or by someone authorized to submit on behalf of the Lead Agency. If signatures are not possible, an email is sufficient to document authority at this time.
	Tip #3: If more than one waiver is requested (more than one provision), these may be submitted in a single document – separate documents are not required – for the waiver request.
What should be included in the	The waiver request should include:
temporary waiver request?	 The reason why the Lead Agency is requesting the waiver, including a description of the extraordinary circumstances.

Example: The hurricane and the resulting flooding left thousands of families displaced from their homes and employment. Families that were not displaced from their homes have returned to homes with severe damage requiring months of rebuilding and recovery. Additionally, families face uncertain employment status as businesses rebuild and recover from the hurricane. The impact of the hurricane and flooding is demonstrated in the number of requests for unemployment assistance received, which has been, more than 120,000 applications for disaster unemployment assistance.

Tip: This is the justification for the waiver request, so include enough detail that describes the extraordinary circumstance.

• Sufficient detail on the provision(s) from which the Lead Agency is seeking temporary relief.

Question

Response

Example: During the recovery and rebuilding efforts, families affected by the hurricane need short-term emergency child care services as they return to and rebuild their residences, assist businesses to rebuild and recover, and search for permanent employment. It is anticipated that as recovery work moves forward, there will be less need for short-term emergency child care services and fewer families will need this support. By waiving the requirements for 12-month eligibility at 45 C.F.R 98.20, a greater number of children can be served at this critical time.

Tip #1: In addition to the regulatory citation (98.xxx), Lead Agencies can include the CCDF Plan section number(s) to identify CCDF regulations they would like to waive.

Tip #2: When requesting a waiver for co-payments, Lead Agencies must be able to clarify who would be included in the waiver – a subset of the CCDF recipient population or all families in the CCDF recipient population – for OCC to be able to determine if a waiver and/or amendment only is needed.

• A description of how relief from the sanction or provision, by itself, will improve the delivery of child care services for children and families.

Example: By allowing for emergency and temporary (less than 12 months) child care services for children affected by the hurricane, the Lead Agency will be able to extend child care resources to a greater number of children during these initial stages of recovery.

• A certification and description of how the health, safety, and well-being of children served through CCDF will not be compromised as a result of the waiver.

Example: The Lead Agency regulates child care facilities and ensures that facilities meet federal and state health and safety requirements. Children served through waiver requests will receive child care services from child care facilities meeting the current health and safety requirements in 45 C.F.R. 98.41 CCDF regulations, and regulated by the state's licensing division. Therefore, the Lead Agency certifies that the health, safety, and well-being of children served will not be compromised as a result of these waiver requests.

• The preferred start date (which may be retroactive to the time the emergency occurred) and the requested duration of the waiver.

Question	Pasnansa
Question	Response Example : The requested start date is September 4, 2017. This was the date the
	Governor issued an Executive Order declaring a state of emergency for all 70 counties
	in the state. The requested duration of the waiver is 9 months. The waiver would
	expire on June 30, 2018.
	expire on suite 50, 2016.
	Tip #1: Include a specific start date and, when determining the duration of the
	waiver, consider identifying the end of the state or federal emergency period (an
	exact end date is not required as long as it is tied to the emergency declaration).
	,
	Tip #2: A single start date and duration dates are sufficient for all waivers being
	requested for this response to COVID-19.
How long are waivers in	Waivers will be approved for a period of time tied to specific emergency
effect?	circumstances.
	Tip: OCC will approve waivers for the requested COVID-19 emergency period. If
	possible, the Lead Agency should specify the length of time of their state declared
	emergency period in their request. OCC will limit waivers up to 1 year initially. If
	needed, Lead Agencies can request and OCC approve renewals via email.
If a waiver is submitted,	Yes, in most cases. Lead Agencies have 60 days to submit a CCDF Plan Amendment to
is a Plan Amendment	correspond with the substantial program change in the waiver request.
needed as well?	
	Tip : For any amendment to a CCDF Plan, the Lead Agency may want to consider a
	temporary, or sun-setting, amendment or an amendment that is specific to the
	disaster, so a later amendment changing back to the original policy won't have to be
	submitted.
Can we request federal	No. OCC does not have the authority to award additional funding in the absence of a
emergency relief	statutory change; all CCDF funds must be distributed in accordance with the
funding for child care	allocation formula. In this case, the CARES Act provided additional emergency
recovery through the	funding.
temporary relief	Tip : You may phrase your waiver request to include activities that you plan to
waiver?	implement should additional discretionary funding be awarded through the formula.
Can we request a	As noted in the CCDF regulations at 45 C.F.R. 98.19(a), the Office of Child Care has no
reduction or waiver of	authority to reduce the State Match amount or waive the Match requirement. By
the required State	law, "the Federal medical assistance percentage for the State" is used to determine
Match amount that is	the State Match level (section 418 (a)(2)(C) of Title IV-A of the Social Security Act).
necessary to access	The waiver authority granted under the CCDBG Act only extends to provisions of the
federal CCDF Matching	CCDBG Act, and the State Match and Maintenance of Effort requirements are set
funds?	forth in the Social Security Act.

Question	Response
If a state was already non-compliant for a certain provision, does it still need to request a waiver for that provision?	Yes, a waiver request may cover other areas not covered by the existing non-compliance.
If a waiver is approved, does it extend the timeline for noncompliance?	At this time, OCC will not extend the timeline for existing non-compliances. We will re-assess by the end of June on issuing notice of non-compliance with penalties assessed to July 2021.
Will OCC waive requirements for conducting the market rate survey (deadline	OCC will not approve these waivers at this time since States still have over a year to conduct the surveys (must be completed by Plan Submission deadline which is July 2021).
July 1, 2021)	OCC plans to provide technical assistance on alternative approaches and activities, such as using administrative data, to assist States right now. We will re-assess this request by the end of June 2020.
Will OCC extend the CCDF Plan Submission deadline?	At this time, OCC does not plan to extend the deadline for the submission of the next CCDF Plan (July 1, 2021 deadline). We will re-assess by the end of June 2020.